IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

RSA.No.561 of 2007.

Date of Decision :29th November, 2007.

I.D. Sharma. …Appellant.

Versus:

State of H.P. and others.. …Respondents.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr.I.D.Sharma, In person. .

For Respondent.

Sanjay Karol, J(Oral).

The present appeal has been filed against the order dated 22nd August, 2007 passed by the Additional District Judge, Fast Track Court, Shimla, dismissing the appellant's appeal assailing the order dated 12th April, 2007.

It is the case of the appellant that civil proceedings instituted by him were finally withdrawn by him on 2nd April, 2003 in terms of the following orders:

> "Present: Plaintiff in person.
> Ms. Gulab Negi, Ld. ADA for defendants.
> Sh. I.D. Sharma plaintiff has made separate statement to the effect that he does not want to pursue with this suit. Hence it be dismissed as withdrawn. In view of the statement made by plaintiff, suit is dismissed as withdrawn. File after completion be consigned to record room."

According to him, he was assured by the Presiding Officer that the Court fee affixed would be refunded to him.

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Consequently he moved an application for withdrawal of the court fee and the same was dismissed vide order dated 12th April, 2007 by the Civil Judge (Junior Division), Court No.4, Shimla.

Aggrieved by the same, the appellant filed an appeal which was also dismissed in terms of the impugned order.

From the perusal of the order dated 2nd April, 2003 it is clear that there is no order to the effect that the court fee was to be refunded to the appellant. On a query put to the appellant, an Advocate appearing in person, it was clarified that he was orally assured by the Presiding Officer that the court fee shall be refunded to him. Admittedly the appellant has neither sought review nor assailed the order of withdrawal by way of any appeal. In this view of the matter, the appellant could not have been refunded the court fee. I see no infirmity in the impugned order passed by the Fast Track Court, Shimla.

Further the present appeal even otherwise was not maintainable under Section 100 of the Code of Civil Procedure as no decree was passed by the lower appellate Court. The appeal is accordingly dismissed.

(Sanjay Karol),
Judge.

November 29, 2007(R)